

I. THE FIRST SESSION (1968)

A. Report of the Commission*

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* Report of the United Nations Commission on International Trade Law on the work of its first session (1968). *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216)*.

INTRODUCTION

The present report, the first report of the United Nations Commission on International Trade Law, is submitted to the General Assembly in accordance with Assembly resolution 2205 (XXI) of 17 December 1966. As provided in the same resolution this report is submitted simultaneously to the United Nations Conference on Trade and Development for comments.

The Commission adopted the present report at its twenty-fifth meeting, on 26 February 1968. The report covers the first session of the Commission, which was held at United Nations Headquarters from 29 January to 26 February 1968.

CHAPTER I

ESTABLISHMENT AND TERMS OF REFERENCE OF THE COMMISSION

A. *Establishment and composition of the Commission*

1. The United Nations Commission on International Trade Law was established by resolution 2205 (XXI) adopted by the General Assembly on 17 December 1966. The resolution provided that the Commission would consist of twenty-nine States elected by the Assembly, with the following distribution of seats:

- “(a) Seven from African States;
- “(b) Five from Asian States;
- “(c) Four from Eastern European States;
- “(d) Five from Latin American States;
- “(e) Eight from Western European and other States.”

The Assembly, the resolution stated, should also have due regard, in the election, to the adequate representation of the principal economic and legal systems of the world, and of the developed and developing countries. The representatives of members on the Commission were to be appointed by member States, in so far as possible, from among persons of eminence in the field of international trade law.

2. The resolution also provided that members would be elected for a term of six years. However, the term of fourteen of the members elected at the first election would expire after a three-year term. The President of the General Assembly would, by drawing lots, select the fourteen members who would serve for three years within each of the groups of States referred to above. Members elected at the first election would take office on 1 January 1968. Thereafter, members elected to the Commission would take office on 1 January of the year following their election.

3. On 30 October 1967, at its twenty-second session, the General Assembly elected the following twenty-nine States as members of the Commission:

Argentina	Mexico
Australia	Nigeria*
Belgium	Norway*
Brazil	Romania
Chile*	Spain
Colombia*	Syria
Congo (Democratic Republic of)	Thailand*
	Tunisia

Czechoslovakia*
France*
Ghana*
Hungary
India
Iran
Italy*
Japan*
Kenya

Union of Soviet Socialist Republics*
United Arab Republic*
United Kingdom of Great Britain and Northern Ireland*
United Republic of Tanzania*
United States of America

The term of office of all members began, in accordance with resolution 2205 (XXI), on 1 January 1968. The fourteen members indicated by asterisks were selected by the President of the General Assembly to serve for a term of three years ending on 31 December 1970. The other fifteen members will serve for the full term of six years ending on 31 December 1973.

B. *Terms of reference given to the Commission by the General Assembly in resolution 2205 (XXI)*

4. The Commission was established by the General Assembly to promote the progressive harmonization and unification of the law of international trade by:

(a) Co-ordinating the work of organizations active in this field and encouraging co-operation among them;

(b) Promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws;

(c) Preparing or promoting the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field;

(d) Promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade;

(e) Collecting and disseminating information on national legislation and modern legal developments, including case law, in the field of the law of international trade;

(f) Establishing and maintaining a close collaboration with the United Nations Conference on Trade and Development;

(g) Maintaining liaison with other United Nations organs and specialized agencies concerned with international trade;

(h) Taking any other action it may deem useful to fulfil its functions.

5. The Commission is required to bear in mind the interests of all peoples, and particularly those of developing countries, in the extensive development of international trade. An annual report, including the recommendations of the Commission is to be submitted to the General Assembly and, simultaneously, to the United Nations Conference on Trade and Development for comments.

6. The Commission may consult with or request the services of any international or national organization, scientific institution and individual expert on any

subject entrusted to it, if it considers that such consultation or services might assist it in the performance of its functions.

7. Appropriate working relationships with inter-governmental organizations and international non-governmental organizations concerned with the progressive harmonization and unification of the law of international trade may be established by the Commission.

CHAPTER II ORGANIZATION OF THE FIRST SESSION

A. Opening, duration and attendance

8. The first session of the Commission was opened on 29 January 1968 on behalf of the Secretary-General by Mr. Constantin A. Stavropoulos, the Legal Counsel of the United Nations, at the United Nations Headquarters, New York. In the course of the session, which ended on 26 February 1968, the Commission held twenty-five meetings.

9. All the States members of the Commission were represented at the session.

10. The United Nations Conference on Trade and Development was represented by an observer.,

11. The following specialized agencies were represented by observers: Food and Agriculture Organization of the United Nations (FAO), International Bank for Reconstruction and Development (IBRD), International Labour Organisation (ILO) and the International Monetary Fund (IMF).

12. The following other inter-governmental organizations were represented by observers: Council of Europe, Commission of European Communities, Hague Conference on Private International Law, International Institute for the Unification of Private Law (UNIDROIT), Organization of American States (OAS), United International Bureaux for the Protection of Intellectual Property (BIRPI).

13. The following international non-governmental organizations were represented by observers: International Chamber of Commerce (ICC) and International Juridical Organization for Developing Countries (IJO).

B. Election of officers

14. At its 1st and 2nd meetings, on 29 and 30 January 1968, the Commission elected the following officers:

Chairman: Mr. Emmanuel Kodjoe Dadzie (Ghana);
Vice-Chairman: Mr. Anthony Mason (Australia);
Vice-Chairman: Mr. Laszlo Reczei (Hungary);
Vice-Chairman: Mr. Shinichiro Michida (Japan);
Rapporteur: Mr. Jorge Barrera Graf (Mexico).

Prior to the election of the Vice-Chairmen at its 2nd meeting, the Commission decided that it should have three Vice-Chairmen as it deemed it desirable that each of the five groups of States listed in paragraph 1 of section II of General Assembly resolution 2205 (XXI) (see paragraph 1 above) should be represented on the bureau of the Commission.

C. Agenda

15. The agenda of the session as adopted by the Commission at its 2nd meeting was as follows:

1. Opening of session.
2. Election of officers.
3. Adoption of the agenda.
4. Adoption of rules of procedure.
5. Programme of work of the Commission under section II, paragraph 8, of General Assembly resolution 2205 (XXI) including:
 - (a) Selection of topics and priorities;*
 - (b) Organization of work and methods;*
 - (c) Working relationships and collaboration with other bodies.*
6. Date of second session.
7. Adoption of the report of the Commission.

The Commission agreed that its consideration of item 5 of the agenda should begin with a general discussion covering all the sub-headings under that item. Thus sub-headings (a), (b) and (c) would be discussed concurrently, together with any other points members considered as coming within the programme of work of the Commission. It was also agreed that at the end of the general discussion the sub-headings could be dealt with separately.

D. Rules of procedure

16. At its 2nd meeting the Commission decided, on the basis of rule 162 of the rules of procedure of the General Assembly, that the rules relating to the procedure of committees of the General Assembly (rules 98-134), as well as rules 45 and 62, would apply to the procedure of the Commission, until such time as the Commission adopted its own rules of procedure. The Commission noted in this connexion that it had, by its decision to have three Vice-Chairmen, in effect amended rule 105 in its application to the Commission as rule 105 provides for the election of only one Vice-Chairman for each committee of the General Assembly. On matters not covered by the rules relating to the procedure of committees of the General Assembly, it was decided that the Commission would be guided by the general principle that the rules of procedure of the General Assembly would apply *mutatis mutandis* to the Commission as may be appropriate for the performance of its functions.

17. Should the Commission decide at a later stage that it was necessary, it would then adopt its own rules of procedure.

18. The view was expressed by several speakers that every effort should be made to reach all decisions by way of consensus, and that it was only after every effort to reach consensus had been exhausted that decisions should be made by a vote. The Commission agreed that its decisions should as far as possible be reached by way of consensus within the Commission, but that in the absence of a consensus, decisions should be made by a vote as provided for in the rules of procedure relating to the procedure of committees of the General Assembly (see paragraph 35 below).

* Items (a), (b) and (c) to be discussed concurrently.

E. Preparatory documents

19. At the opening of its session the Commission had before it the following documents, submitted by the Secretary-General: First session of the United Nations Commission on International Trade Law (A/CN.9/1); Provisional agenda (A/CN.9/2); Adoption of rules of procedure (A/CN.9/3); Comments by Member States, organs and organizations on the work programme of the Commission (A/CN.9/4 and Corr.1 and Add.2); Analysis of the comments submitted by Member States, organs and organizations on the work programme of the Commission (A/CN.9/4/Add.1); Survey of activities of organizations concerned with the harmonization and unification of the law of international trade (A/CN.9/5); Organization and methods of work (A/CN.9/6 and Corr.1); Collaboration and working relationships with organs and organizations concerned with international trade law (A/CN.9/7). The Commission also had before it the report on the progressive development of the law of international trade (A/6396), which was submitted by the Secretary-General to the General Assembly at its twenty-first session.

CHAPTER III GENERAL DEBATE

20. At its 2nd meeting the Commission began consideration of item 5 of its agenda concerning the programme of work of the Commission. In accordance with the decision taken at its 2nd meeting (see paragraph 15 above), the Commission's consideration of the item commenced with a general debate covering all points of the item; namely, sub-item (a), selection of topics and priorities; sub-item (b), the organization of work and methods; and sub-item (c), working relationships and collaboration with other bodies. The Commission concluded its general debate at its 9th meeting.

A. General observations

21. Many representatives expressed appreciation of the initiative taken by the Hungarian delegation at the twentieth session of the General Assembly, resulting in the establishment of the Commission.

22. There was general recognition that the establishment of the Commission marked the opening of a new and important chapter in the progressive harmonization and unification of the law of international trade. The Commission, whose membership reflected the principal economic and legal systems of the world and the developed and developing countries, was considered to be most suited for the purpose of eliminating divergencies between national systems of law which formed barriers to the development of international trade. While the work facing the Commission was considerable, both in scope and complexity, there were a number of encouraging factors. The unanimous adoption by the General Assembly of resolution 2205 (XXI), which established the Commission, augured well for the work of harmonization and unification. The hope was expressed, by a number of representatives, that out of the co-operative endeavours of the Commission and of other bodies active in the field, a new *lex mercatoria* would in time evolve reflecting the interest of the entire international community.

23. A number of representatives made reference in their statements to the question of the definition of international trade law. Attention was drawn to the definition contained in paragraph 10 of the report of the Secretary-General (A/6396). The law of international trade was there defined as "the body of rules governing commercial relationships of a private law nature involving different countries". Many representatives thought that the definition might be accepted by the Commission as a provisional definition. Some other representatives called attention to problems which they thought should also include questions of a public law nature, if a truly comprehensive definition of trade law was to be established by the Commission.

24. There appeared, however, to be general agreement that it was not essential at this stage of its work for the Commission to formulate a definition of international trade law. It was observed that it was a difficult matter to formulate such a definition; that it was not essential to the adoption of the Commission's programme of work; and however interesting attempts to do so might be from a theoretical point of view, they could give rise to controversies within the Commission.

B. Relationship between the Commission and other bodies

1. Relationship to the United Nations Conference on Trade and Development and to other United Nations organs

25. Several representatives made reference to the close relationship that should obtain between the work of the Commission and the United Nations Conference on Trade and Development (UNCTAD). It was a matter to which, they pointed out, the General Assembly had in resolution 2205 (XXI) given special attention, by providing as follows in section II, paragraph 10, of the resolution:

"The Commission shall submit an annual report, including its recommendations, to the General Assembly, and the report shall be submitted simultaneously to the United Nations Conference on Trade and Development for comments. Any such comments or recommendations which the Conference or the Trade and Development Board may wish to make, including suggestions on topics for inclusion in the work of the Commission, shall be transmitted to the General Assembly in accordance with the relevant provisions of Assembly resolution 1995 (XIX) of 30 December 1964. Any other recommendations relevant to the work of the Commission which the Conference or the Board may wish to make shall be similarly transmitted to the General Assembly."

26. The harmonization, progressive unification and modernization of international trade law have, it was observed, an essential role to play in the development of countries which, together with the expansion of international commerce, constitutes the primary objective of UNCTAD.

27. The valuable work of other United Nations organs in the field of international trade law was also referred to by many representatives who attached importance to close collaboration between the Commission and such other United Nations bodies. They drew attention in particular to the work towards harmonization and unifi-

cation of trade law missions.

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cation that had been accomplished in certain areas of trade law by the United Nations regional economic commissions.

2. Relationship to non-United Nations bodies

28. The considerable efforts that had already been made, and continued to be made, by international and national, world-wide and regional, governmental and non-governmental organizations towards the harmonization and unification of the law of international trade was widely acknowledged in the Commission. The importance attached by the General Assembly, in resolution 2205 (XXI), to close co-operation between the Commission and such organizations was also recalled in several statements. The work of the Commission, it was observed by a number of representatives, should be complementary to the efforts of such organizations and they should be encouraged by the Commission. Attention was drawn to the acknowledgement contained in the Secretary-General's report on the progressive development of the law of international trade (A/6396, chapter II) with respect to the great value of the work done by such organizations. Close co-operation between the Commission and organizations active in the field would avoid duplication of effort and of result, and the Commission, it was stressed, should make full use of such bodies; according to some delegations this should be done particularly when initiating new studies.

C. Programme of work

1. Collection and dissemination of information concerning international trade law

29. The view was expressed by the great majority of speakers that the collection and dissemination of information pertaining to international trade law was a matter to which the Commission should give very early consideration. The Commission, it was said, could only have a complete view of what should be accomplished in the field of harmonization and unification, and more usefully expend its efforts to that end, if it had a complete picture of what had already been accomplished. The collection and dissemination of such information would ensure, on the part of the Commission as well as on the part of other bodies active in the field, that wasteful duplication of effort and of result was avoided. On the basis of such information, the activities of the Commission and of other bodies could be satisfactorily co-ordinated. The circulation of information would make possible the dissemination on an international level of more exact and complete data on activities under way and on the results already achieved in the field of international trade law.

30. The information to be collected, it was suggested, might include information as to all bodies active in the field of the harmonization and unification of international trade law and information as to all work already accomplished and presently undertaken in the field of harmonization and unification. The collection and dissemination of such information was envisaged as a permanent aspect of the work of the Commission. It was thought that it would be appropriate to entrust this function to the Secretariat, which would act as a clearing-house, or documentation centre, for information on international trade law.

2. Discussion of topics and priorities

31. The suggestion was made, in the document submitted by the Secretary-General to the Commission on organization and methods of work (A/CN.9/6), that the Commission might consider different approaches to the matter of establishing a programme of work. One possible approach might be for the Commission to select one specific topic at a time, concentrate on it and pass on to another topic after completing its work on the first. A different approach would be for the Commission to include in its work programme all the subjects falling within the scope of international trade law. The Commission might also consider whether it might not choose a single but broad topic and then take up simultaneously or successively, various aspects of that topic for detailed study. Still a further approach would be for the Commission to choose a number of topics which would not necessarily be related one to another, and establish an order of priority among them. The approach last referred to, it was pointed out, was the one adopted by the International Law Commission at its first session in 1949. The International Law Commission drew up a list of fourteen topics for possible codification, and from that list decided to give priority to the law of treaties, arbitral procedure and the régime of the high seas.

32. Of these different approaches, the Commission, in the course of its general discussion, favoured the selection of certain substantive topics for inclusion in the programme of its future work and the selection of certain topics for priority.

33. In the course of the Commission's general discussion, a number of specific topics were proposed for inclusion in the Commission's programme of future work. Towards the conclusion of the general discussion, it was apparent that there were certain topics on whose inclusion a wide measure of agreement existed in the Commission. The suggestion was accordingly made that all the specific topics that had been proposed might be listed and that each member of the Commission should be requested to express a preference for a specified number of topics, for inclusion in the Commission's programme of work.

34. In a statement to the Commission at the close of the discussion, the Chairman stated that in the course of the debate, certain topics had been proposed for inclusion in the Commission's programme of work: the topics most frequently suggested were international sale of goods, including the promotion of the Hague Conventions of 1964 and 1955 (proposed by fifteen delegations); commercial arbitration, including the promotion of wider acceptance of the 1958 United Nations Convention (proposed by ten delegations); negotiable instruments and banker's commercial credits (proposed by eight delegations); limitations (proposed by six delegations); promotion of wider acceptance of trade terms, general conditions of sale and standard contracts, including "Incoterms"¹ (proposed by five delegations). Other topics, he stated, had also been put forward, including transportation (proposed by four delegations), insurance (proposed by four delegations).

¹ *Incoterms 1953*, international rules for the interpretation of trade terms, prepared by the International Chamber of Commerce.

ions), intellectual property (proposed by two delegations). Finally, certain topics had been suggested by one delegation each; e.g., consequence of frustration; *force majeure* clauses in contracts; elimination of discrimination in international trade including the application of the most-favoured-nation principle; agency; guarantees and securities; and the legalization of documents.

D. Organizational matters

1. The principle of consensus

35. The view was expressed by a number of speakers that the work of the Commission should be based on consensus within the Commission. It was said that such harmonization and unification as had already been achieved in the field of international trade law was the result of consensus, and that there were several instances where, notwithstanding long and patient research and discussion, progress had not been realized because of an absence of consensus. Some representatives, however, while expressing support for the view that every endeavour should be made on the part of members of the Commission to reach consensus in making decisions, pointed out that if consensus was not attainable the Commission would need to abide by its rules of procedure which provided for decisions of the Commission being made by vote. At the 8th meeting of the Commission, the Chairman, in answer to a question raised in debate, stated that he would always endeavour to base decisions on a consensus within the Commission, but if consensus was not obtainable he would, under the rules of procedure of the Commission, have to put the particular issue to the vote.

2. Working arrangements

36. A variety of suggestions were made in the course of the Commission's general discussion as to the procedural arrangements which might be adopted by the Commission in its work. These included the establishment of sessional or inter-sessional committees or working groups; the appointment of special rapporteurs, selected from among the members of the Commission for the study of particular subjects; the retention of consultants; requests to organizations active in the field of the harmonization and unification of international trade law to study and advise the Commission on particular subjects; assignment of certain matters to the Secretariat; and variations of these procedures. The suggestion was also made that the Commission might, usefully, hold an extraordinary session in New York prior to its second regular session in Geneva or establish an inter-sessional working group to meet prior to its second session to ensure that the Commission would at its second session have precisely defined topics on its agenda and be advised as to the work that had already been accomplished with respect to each of such topics and the degree to which other organizations might be in a position to co-operate with the Commission in its work.

37. In the view of several speakers, the particular procedures to be adopted by the Commission would depend to a large degree on the particular topics concerned, and, accordingly, it was desirable that in the matter of procedures of work the Commission should maintain considerable flexibility. The possibility that certain procedures may have financial implications was also a matter to be

taken into account, and where financial implications were involved, the advice of the Secretariat should be obtained.

E. Conclusion of the general debate

38. At the 9th meeting of the Commission, at the end of the Commission's general debate on agenda item 5, the Chairman made a concluding statement. The general debate on agenda item 5, he stated, had served a most useful purpose. The matters were now clear in regard to which a consensus seemed to exist within the Commission as were the matters in regard to which some further discussion seemed desirable with a view to arriving at a consensus. The importance of collaboration with UNCTAD and other United Nations organs had been emphasized, he said, and there appeared to be general recognition within the Commission that, in promoting the harmonization and unification of international trade law, collaboration between the Commission and other bodies working in the field was most desirable. He referred to the variety of suggestions that had been made in the course of the general debate on the selection of topics and priorities and he listed the specific topics that had been proposed for selection (see paragraph 34 above). The determination of the organization and methods of work, he stated, would, in his opinion, depend primarily on the particular topic selected.

CHAPTER IV

PROGRAMME OF WORK OF THE COMMISSION

A. Selection of topics and priorities

39. On the conclusion of the Commission's general debate on its programme of work, the Commission discussed the nature of the list of topics and priorities to be prepared by the Commission. The observation was made by some representatives that there were two approaches possible to the question of the harmonization and unification of international trade law, namely, the unification of substantive rules of law, and the establishment of rules to regulate the conflict of laws. To both of these approaches, they said, consideration should be given. The suggestion was made by other representatives that the list of topics should be divided into short-term and long-term subjects. The Commission, it was observed, might include in its programme of work all items mentioned in the course of the general debate, and then give priority to certain items. Such a list would be provisional, not exhaustive or final, and deletions, additions or changes in priorities would, accordingly, be possible at later sessions of the Commission. The view was also expressed that the list of topics to be prepared by the Commission at the present session should be limited to a few topics which could be dealt with over a short term. It would be inadvisable, it was said, for the Commission at this session to decide on a programme of work for many years to come; and the topics to be examined by the Commission on a long-term basis might be more satisfactorily decided upon later, when more information was available. It was suggested therefore that, while all topics proposed at the present session might be recorded with indications as to the representatives by whom topics were proposed, the Commission itself should at the present session decide to deal only with a few short-term topics.

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40. Following informal consultations between members of the Commission, a working paper on a list of topics, priorities and methods of work was submitted to the Commission at its 13th meeting by the delegations of the Democratic Republic of the Congo, Ghana, India, Iran, Japan, Kenya, Nigeria, Syria, Thailand, Tunisia, the United Arab Republic and the United Republic of Tanzania. After certain amendments had been made, the working paper was unanimously accepted by the Commission as a working paper of the Commission. As revised (A/CN.9/L.1/Rev.1), the working paper read as follows:

I. List of topics

During the general debate the following topics were suggested by several delegations. A great number of delegations considered that all these topics should form the future work programme of the Commission. This list of topics is not exhaustive.

- (1) International sale of goods:
 - (a) In general;
 - (b) Promotion of wider acceptance of existing formulations for unification and harmonization of international trade law in this field including the promotion of uniform trade terms, general conditions of sale and standard contracts;
 - (c) Different legal aspects of contracts of sale like:
 - (i) Limitations;
 - (ii) Representation and full powers;
 - (iii) Consequences of frustration;
 - (iv) *Force majeure* clauses in contracts.
- (2) Commercial arbitration:
 - (a) In general;
 - (b) Promotion of wider acceptance of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- (3) Transportation.
- (4) Insurance.
- (5) International payments:
 - (a) Negotiable instruments and banker's commercial credit;
 - (b) Guarantees and securities.
- (6) Intellectual property.
- (7) Elimination of discrimination in laws affecting international trade.
- (8) Agency.
- (9) Legalization of documents.

II. Priorities

The Commission decided that priority should be given to the following topics:

- (i) International sale of goods;
- (ii) International payments;
- (iii) Commercial arbitration.

III. Methods of work

Methods of work should be suitable to the particular topic under consideration.

- IV. Workings groups, or sub-committees or other appropriate bodies of the Commission, should be appointed during the present session to deal respectively with the topics mentioned in paragraph II and submit their reports to the Commission at its next session.

- V. The Commission endorses the statement of the Chairman that it should take its decisions as far as possible by a consensus, failing which by a vote, as under the rules of procedure for the subsidiary organs of the General Assembly.

41. The representative of the USSR wished it noted, with respect to item (7) of section I of the working paper, that, since some representatives had called attention to the fact that the most-favoured-nation clause was being considered by the International Law Commission, his delegation reserved its position on the inclusion of the most-favoured-nation clause under item (7) pending the further steps to be taken by the International Law Commission concerning the legal aspects of that question.

42. The order in which the three topics were listed in section II of the working paper was not considered by the Commission as implying any order of priority as between the three topics. It was observed in that connexion that the Commission might consider it appropriate that work on the three topics should proceed concurrently.

43. It was understood, with respect to section III of the working paper, that the particular methods of work to be followed by the Commission, including consultations with other bodies active in the progressive harmonization and unification of international trade law, would be decided upon by the Commission in light of the requirements of each particular topic. It was clarified, at the 15th meeting of the Commission and later at its 17th meeting, that section IV of the working paper was to be read as being subject to section III of the working paper. Accordingly, the question of the establishment of working groups or sub-committees or other appropriate bodies, as referred to in section IV, was a matter that would be open for discussion when the Commission considered, in terms of section III of the working paper, the methods of work that would be suitable with respect to a particular topic.

44. The purpose of section V of the working paper, it was also noted, was to acknowledge the understanding reached within the Commission with respect to the principle of consensus as stated by the Chairman at the 8th meeting of the Commission.

B. Organization of work and methods

1. Methods of work for priority topics

45. The Commission decided at its 15th meeting, on 15 February 1968, that a working group should be established to advise the Commission, at its present session, on the methods of work that should be followed in dealing with the three topics given priority; namely, international sale of goods, international payments, and commercial arbitration. The Commission, after considering various suggestions as to the composition of such a working group, decided that the working group should consist of the members of the bureau of the Commission; namely, the Chairman, Mr. Emmanuel Kodjoe Dadzie (Ghana); the three Vice-Chairmen, Mr. Anthony Mason (Australia), Mr. Laszlo Reczei (Hungary), and Mr. Shinichiro Michida (Japan); and the Rapporteur, Mr. Jorge Barrera Graf (Mexico), assisted by the Secretariat. The working group would hold meetings open to rep-

representatives and observers. Accordingly, any representative or observer who might be interested in a particular phase of the work could express his views at meetings to be held by the working group for that purpose. The meetings of the working group would be informal.

46. On 20 February 1968, at the 16th meeting of the Commission, a working paper entitled "Methods of work for priority topics" (A/CN.9/L.3) was submitted to the Commission by the Working Group. The purpose of the working paper, it was stated, was to indicate possible methods which the Commission might wish to consider in dealing with the three priority topics which had been selected for inclusion in the work programme of the Commission: international sale of goods, international payments and international commercial arbitration. The scope of the working paper was confined, it was also stated, to the period between the first and the second sessions of the Commission.

47. The working paper was discussed by the Commission at its 16th, 17th, 18th and 19th meetings; and on the basis of such discussions, the Commission decided upon methods of work to be followed between the first and second sessions of the Commission with respect to the three topics given priority.

48. The decisions of the Commission were recorded in document A/CN.9/9, on the methods of work for priority topics, as follows

I. INTRODUCTION

1. The purpose of this paper is to indicate possible methods that may be used in dealing with the priority topics selected for inclusion in the work programme of the Commission. The scope of this paper is confined to the period between the first and the second sessions of the Commission.

2. At its 14th meeting, the Commission decided that the following topics should be given priority:

- (a) International sale of goods;
- (b) International payments;
- (c) Internal commercial arbitration.

3. The Commission also decided that the methods of work should be suitable to the particular topic under consideration.

4. During the general debate the importance of making a thorough study of each topic in order to enable the Commission to make substantive decisions was emphasized. Paragraph IV of working paper A/CN.9/L.1/Rev.1 suggests that "working groups, or sub-committees or other appropriate bodies of the Commission, should be appointed during the present session to deal respectively with the topics mentioned in paragraph II and submit their reports to the Commission at its next session". It was also stressed during the debate that in carrying out its functions the Commission should co-operate with the respective organizations and avoid duplication of work.

II. INTERNATIONAL SALE OF GOODS

5. During the general debate the following items, falling within the scope of international sale of goods, were suggested by delegations:

- (a) International sale of goods in general;
- (b) Hague Conventions of 1964 relating to a Uniform Law on the International Sale of Goods and to a Uniform Law on the Formation of Contracts for the International Sale of Goods;

(c) Hague Convention of 1955 on the Law Applicable to International Sale of Goods;

(d) Elaboration of a commercial code;

(e) Contracts of sale;

(f) Different legal aspects of contracts of sale:

(i) Time-limits and limitations (prescription) in the field of international sale of goods;

(ii) Agency;²

(iii) Consequences of frustration;

(iv) *Force majeure* clauses in contracts;

(g) General conditions of sale, standard contracts, Incoterms and other trade terms.

Principal international instruments and formulations

6. The following international instruments and formulations may be considered as being of special importance with respect to the harmonization and unification of the law of the international sale of goods:

(a) Convention relating to a Uniform Law on the International Sale of Goods of 1964 (prepared by UNIDROIT);

(b) Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods of 1964 (prepared by UNIDROIT);

(c) Convention on the Law Applicable to International Sale of Goods of 1955 (formulated by the Hague Conference on Private International Law);

(d) Convention on the Law Applicable for the Transfer of Property in International Sales of Corporeal Movables of 1958 (formulated by the Hague Conference);

(e) "Incoterms of 1953" — international rules for the interpretation of trade terms — (formulated by the International Chamber of Commerce);

(f) International rules for the interpretation of the trade terms "Delivered at frontier . . . (named place of delivery at frontier)" and "Delivered . . . (named place of destination in the country of importation) duty paid" (formulated by the International Chamber of Commerce);

(g) General conditions of sale and standard forms of contract as listed in paragraph 67 of document A/6396 (formulated by the Economic Commission for Europe).

Selected items

7. In view of the wide scope and complex nature of the concept of international sale of goods as laid down in paragraph 5 above, at this early stage the Commission found it impractical to deal with all the facets of the subject at the same time. Accordingly, the Commission selected some of the main items within the topic, i.e.: (a) the Hague Conventions of 1964; (b) the Hague Convention on Applicable Law of 1955; (c) time-limits and limitations (prescription) in the field of international sale of goods; (d) general conditions of sale, standard contracts, Incoterms and other trade terms.

Other items within the priority list

8. It was agreed that any member of the Commission would be at liberty to submit to the Secretary-General studies on any topic on the priority list other than the selected items referred to in paragraph 7 above. The Secretary-General was requested to circulate such studies to all the members of the Commission.

² Under this item it is intended to deal both with the common law concept of "agency" and the concepts of "représentation" (in French) and "full powers" in other systems.

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Methods of work(a) *Study of the items as a whole*

9. As regards methods of work, one possibility would be to make a comprehensive study of the selected items referred to in paragraph 7, having in mind the over-all aim of promoting the progressive harmonization and unification of the law of the international sale of goods, as a whole.

10. It would not seem possible, however, to prepare a study of such magnitude in time for submission to the second session of the Commission. As indicated in paragraph 6 above, the main instruments relating to the selected items were formulated by different organizations (UNIDROIT, the Hague Conference, ICC, ECE). Accordingly, the Commission did not find it desirable to entrust the work as a whole to a single organization. On the other hand, the Commission considered that if the organizations concerned were invited to deal jointly with the matter, it would be difficult for such organizations to make substantial progress within the short time available.

11. Other methods could be envisaged, such as entrusting the work to the Secretariat, in which case the assistance of consultants would be required. However, in view of the limited financial resources available to the Commission in 1968 this method was not found to be entirely suitable for the purpose.

(b) *Study of the items separately*

12. The Commission decided therefore, at this stage, to deal separately with the selected items, i.e.:

- (i) The Hague Conventions of 1964;
- (ii) The Hague Convention on Applicable Law of 1955;
- (iii) Time-limits and limitations (prescription) in the field of international sale of goods;
- (iv) General conditions of sale, standard contracts, Incoterms and other trade terms.

(i) *The Hague Conventions of 1964*

13. While the Hague Conventions of 1964 have not yet come into force³ they encompass a very wide area within the scope of the international sale of goods and are the product of many years of preparatory work.

14. It was considered desirable, therefore, to take stock of the attitude of States in respect of those conventions. For this purpose the Commission decided to adopt the following procedure:

A. The Secretary-General should send to States Members of the United Nations and States members of any of its specialized agencies a questionnaire, together with the text of the conventions and Professor Tunc's commentary thereon. Each of the States concerned should be invited to indicate whether or not the State intends to adhere to the 1964 Conventions and the reasons for its position.

B. In addition, the States members of the Commission should be invited to make, if possible, a study in depth of the subject, taking into account the aim of the Commission in the promotion of the harmonization and unification of the law of international sale of goods.

C. The replies and studies referred to in A and B above should be transmitted by Governments to the Secretary-General within six months from the receipt of the Secretary-General's invitation to that effect.

D. The Secretary-General should circulate the text of the aforementioned replies and studies to the States members of the Commission, UNIDROIT and any other organization especially concerned for their comments.

E. The Secretary-General should also prepare, in consultation with the secretariat of UNIDROIT, an analysis of the

replies and studies received from Governments. In the preparation of such an analysis account should be taken of any action which might be undertaken by UNIDROIT, pursuant to Recommendation II adopted by the Diplomatic Conference on the Unification of the Law Governing the International Sale of Goods.⁴ The analysis should be circulated to the States members of the Commission, UNIDROIT and any other organization especially concerned, for their comments.

F. The Commission, at its second session, should consider the replies and studies referred to in A and B, the analysis referred to in E, as well as any comments made under D and E.

15. The Commission considered desirable that the replies and studies referred to in A and B of the preceding paragraph should reflect adequately the points of view of the different legal and economic systems as well as those of developed and developing countries.

(ii) *The Hague Convention of 1955 on the Law Applicable to International Sale of Goods*

16. As of this date, seven States⁵ have adhered to the Hague Convention of 1955, which was established under the auspices of the Hague Conference on Private International Law. While the scope of the Convention is much less wide than the 1964 Conventions, it deals with a matter of considerable importance in avoiding conflicts of law in international sale of goods transactions. The Commission found it desirable, therefore, to draw the 1955 Convention to the attention of a wider range of States than those which are members of the Hague Conference on Private International Law.

17. For this purpose the Commission decided to adopt the following procedure:

A. The Secretary-General should transmit the text of the Convention to States Members of the United Nations and States members of any of its specialized agencies. At the same time each of the States approached should be invited to indicate whether or not the State intends to adhere to the 1955 Convention and the reasons for its position.

B. The replies to the above questions should be transmitted by Governments to the Secretary-General within six months from the receipt of the Secretary-General's invitation.

C. The Secretary-General should transmit the text of the replies to the Hague Conference on Private International Law for comments.

D. The Commission, at its second session, should consider the replies from Governments as well as any comments thereon made by the Hague Conference.

(iii) *Time-limits and limitations (prescription) in the field of international sale of goods*

18. The Commission decided to request the Secretary-General, after appropriate consultation, to invite interested Governments of States who are members of the Commission to submit to the Secretary-General studies on the subject of time-limits and limitations (prescription) in the field of international sale of goods. The Secretary-General shall, in addressing invitations to Governments, have regard to the desirability of obtaining studies which are illustrative of the legal systems of the world.

(iv) *General conditions of sale, standard contracts, Incoterms and other trade terms*

19. With respect to general conditions of sale and standard contracts, the Commission decided to request the Secretary-General, in consultation with the secretariats of the ECE, the other regional economic commissions and other organizations concerned, to submit to the second session of the Commission

⁴ See A/CN.9/5, para. 5.

⁵ Belgium, Denmark, Finland, France, Italy, Norway and Sweden.

³ See A/CN.9/5, para. 4 and foot-note 4.

a preliminary report examining the possibility of promoting the wider use of the existing general conditions of sale and standard contracts.

20. As regards Incoterms 1953, the Commission decided to request the Secretary-General to invite the International Chamber of Commerce to submit to the Secretary-General, before the second session of the Commission, a report including its views and suggestions concerning possible action that might be taken for the purpose of promoting the wider use of Incoterms and other trade terms by those engaged in international commerce.

21. The reports referred to in the preceding paragraphs 19 and 20 should state the considerations and factors which are impeding a wider use and acceptance of general conditions of sale, standard contracts, Incoterms and other trade terms.

III. INTERNATIONAL PAYMENTS

22. During the general debate the following topics, falling within the scope of international payments, were suggested by delegations:

- (a) Negotiable instruments;
- (b) Banker's commercial credits;
- (c) Guarantees and securities.

Principal international instruments and formulations

23. The following international instruments and formulations may be considered as being of special importance with respect to the harmonization and unification of the law of international payments:

- (a) Convention providing a Uniform Law for Bills of Exchange and Promissory Notes of 1930;
- (b) Convention for the Settlement of Certain Conflicts of Laws in connexion with Bills of Exchange and Promissory Notes of 1930;
- (c) Convention providing a Uniform Law of Cheques of 1931;
- (d) Convention for the Settlement of Certain Conflicts of Laws in connexion with Cheques of 1931;
- (e) Uniform Customs and Practice for Documentary Credits (formulated by the International Chamber of Commerce);
- (f) Uniform Rules for the Collection of Commercial Paper (formulated by the International Chamber of Commerce).

Method of work

24. The considerations contained in paragraphs 9-11 above in connexion with international sale of goods are generally applicable to the concept of international payments as well, which is also a wide and complex subject.

25. Rather than making a comprehensive study of international payments as a whole, the Commission found it convenient, therefore, to deal separately with (i) negotiable instruments; (ii) banker's commercial credit and (iii) guarantees and securities. Consistent with the object of the Commission, i.e. the progressive harmonization and unification of the law of international trade, it was agreed that the consideration of these items by the Commission should relate primarily to international transactions.

(i) *Negotiable instruments*

26. UNIDROIT has been working on the subject of unification of law relating to negotiable instruments.⁶ The Commission therefore considered it appropriate to request the Secretary-General to consult with UNIDROIT as to whether the latter would be prepared to make a study of the measures that

could be adopted in order to promote the harmonization and unification of the law relating to negotiable instruments, in so far as transactions involving different countries are concerned, and especially:

(a) To examine the question of the convenience of promoting a wider acceptance of the Conventions of 1930 and 1931 referred to in sub-paragraphs (a), (b), (c) and (d) of paragraph 23 above;

(b) To study the possible means of giving reciprocal international recognition and protection to negotiable instruments under the Common Law and to the instruments recognized under the Geneva Conventions; and

(c) To consider the creation of a new international negotiable instrument for international payments.

27. The Commission will consider the reply from UNIDROIT at its second session, together with any suggestions that may be submitted by the States members of the Commission.

(ii) *Banker's commercial credits*

28. In view of the interest of, and work done by, the International Chamber of Commerce on this and related topics⁷ the Commission decided to request the Secretary-General to inquire whether the ICC would be prepared to undertake a study of the subject. The Secretary-General was also requested to consult with other organizations concerned.

(iii) *Guarantees and securities*

29. It does not appear that any existing organizations has dealt with the subject of the harmonization and unification of law with respect to guarantees and securities as related to international payments. At this stage, therefore, the Commission decided to request the Secretary-General to make a preliminary examination of this matter with a view to the possibility of making a study for submission to the Commission at the appropriate time.

IV. INTERNATIONAL COMMERCIAL ARBITRATION

Principal international instruments and formulations

30. The following international instruments and formulations may be considered as being of special importance with respect to the harmonization and unification of the law relating to international commercial arbitration:

- (a) Geneva Protocol on Arbitration Clauses of 1923;
- (b) Convention on the Execution of Foreign Arbitral Awards of 1927;
- (c) Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (adopted by a Conference convened by the United Nations);
- (d) European Convention on International Commercial Arbitration of 1961;
- (e) Arbitration Rules (formulated by the Economic Commission for Europe);
- (f) Agreement of 17 December 1962 relating to the Application of the European Convention on International Commercial Arbitration (formulated by the Council of Europe);
- (g) Convention on the Settlement of Investment Disputes between States and Nationals of Other States (formulated by the International Bank for Reconstruction and Development);
- (h) European Convention providing a Uniform Law on Arbitration (formulated by the Council of Europe);
- (i) Rules for International Commercial Arbitration (formulated by the Economic Commission for Asia and the Far East);
- (j) Standards for Conciliation (formulated by the Economic Commission for Asia and the Far East);

⁶ See A/6396, annex II A 3.

⁷ See A/6396, paras. 147-166.

(k) Draft Inter-American Convention on Commercial Arbitration (formulated by the Inter-American Juridical Committee);

(l) Draft Protocol on the Recognition and Enforcement of Arbitral Awards (formulated by the Council of Europe).

Methods of work

31. As indicated in the list contained in the preceding paragraph, the United Nations (including its regional economic commissions) has been working on several aspects of international commercial arbitration.

32. The Commission decided therefore to request the Secretary-General, in consultation with the organs and organizations concerned, to prepare a preliminary study of steps that might be taken with a view to promoting the harmonization and unification of law in this field, having particularly in mind the desirability of avoiding divergencies among the different instruments on this subject.

33. With respect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which was established under the auspices of the United Nations, the Commission decided to draw the attention of Member States of the United Nations to the existence of the Convention and to invite States to consider the possibility of adhering to it.

V. COLLABORATION WITH ORGANIZATIONS

34. In carrying out its work on the topics selected as priority items the Commission considered it desirable to collaborate with organs and organizations concerned with the progressive harmonization and unification of those aspects of the law of international trade.

35. With this aim in view the Commission decided to request the Secretary-General to hold suitable consultations with the organs and organizations concerned as may be indicated in the different phases of the work.

49. As regards the provisions of paragraph 14.A and 17.A of the above paper, the representative of the USSR expressed the view that, as all countries engaged in international trade, the documents referred to in those paragraphs should be transmitted not only to members of the United Nations and of the specialized agencies but to all countries. The representatives of Czechoslovakia, Hungary, Kenya, Romania, Syria, the United Arab Republic and the United Republic of Tanzania expressed agreement with the view of the representative of the USSR.

50. A number of representatives expressed the view that the question raised by the representative of the USSR involved political and practical difficulties and was not a question that could be appropriately determined by a technical body such as the Commission. They also drew attention to the statement made by the Secretary-General on the same question in the General Assembly at its 1258th plenary meeting on 18 November 1963, which was reaffirmed by the Secretary-General in a communication circulated to the Security Council on 18 May 1967 (S/7891).

51. It was noted that some legal concepts, as for example the common law concepts of "agency" and "limitations" (in English), may not have exact equivalents in the terminology of other legal systems. It was generally agreed that whenever a legal concept in one language or legal system has a broader connotation than its version in another language or legal system the concept should be understood to encompass the broader scope, unless the Commission decides otherwise.

2. *Establishment of a working group*

52. The Commission at its 21st meeting adopted the following proposal made by the representative of India concerning the establishment of a working group:

"A Working Group of this Commission be established composed of fourteen member States represented on the Commission:

"Six from the Asian-African States;

"Two from the Eastern European States;

"Two from the Latin American States; and

"Four from the Western European and other States, to be appointed by the Chairman in consultation with the different groups concerned.

"The Secretary-General should arrange for a meeting of such Working Group, one week before the opening of the second session of the Commission, if in the light of the comments, reports and studies on the priority topics received pursuant to the proposals in working paper A/CN.9/L.3,⁸ the Secretary-General is of the opinion that it would be of assistance to the Commission's future work to arrange such meeting.

"If such meeting is convened, other members of the Commission shall be entitled to be present at the meetings of the Working Group and to present their observations orally or in writing.

"The Working Group shall examine the comments of Governments, reports and studies received pursuant to the recommendations in working paper A/CN.9/L.3 on the priority topics, and generally consider the progress made in the work programme established by the Commission at its first session and shall make appropriate proposals or recommendations to the Commission at its second session."

53. At the 23rd meeting of the Commission, the Chairman appointed for membership in the working group the Congo (Democratic Republic of), Ghana, Kenya and the United Arab Republic, nominated by the African States, and Brazil and Chile, nominated by the Latin American States.

54. At the same meeting, the Commission decided that the other groups of States represented on the Commission should submit to the Secretary-General their nominations of States for membership in the working group not later than one month before the date on which the working group might be convened by the Secretary-General, namely one week before the opening of the second session of the Commission.

55. At the 25th meeting of the Commission, the Chairman appointed for membership in the working group India and Japan, nominated by the Asian group.

C. *Working relationships and collaboration with other bodies*

56. The Commission decided, at its 23rd meeting, that the question of working relationships and collaboration with other bodies (item 5 (c) of the agenda) should be considered at its next session. The Chairman noted that

⁸ For the text as approved by the Commission, see paragraph 48 above.

the temporary arrangements described in section A of chapter III of the Secretary-General's note on collaboration and working relationships with organs and organizations concerned with international trade law (A/CN.9/7) would continue to apply pending a decision by the Commission on this subject. With reference to paragraphs 12 and 13 of document A/CN.9/7, the Secretary-General was requested to place on the mailing list for documents relating to the activities of the Commission those inter-governmental and international non-governmental organizations which are concerned with the priority topics included in the work programme of the Commission.

CHAPTER V
ESTABLISHMENT WITHIN THE SECRETARIAT OF A
REGISTER OF ORGANIZATIONS AND A REGISTER
OF TEXTS

57. A working paper (A/CN.9/L.2) containing recommendations with respect to the establishment within the Secretariat of a register of organizations and a register of certain treaties and legislative texts was submitted to the Commission at its 14th meeting by the representative of the United Kingdom.

58. The working paper was considered at the 14th meeting of the Commission, in the course of which a number of points pertaining to the proposed collection and dissemination of such information by the Secretariat was discussed.

59. At the 16th meeting, the representative of the United Kingdom informed the Commission that, in the light of the previous discussion in the Commission and following informal consultations between members, he was submitting a revised proposal to the Commission (A/CN.9/L.5). His original proposal was, accordingly, withdrawn. The proposal of the United Kingdom was accompanied by a statement prepared by the Secretariat on the financial and administrative implications of the proposal (A/CN.9/L.5/Add.1).

60. The revised proposal of the United Kingdom was, together with the Secretariat's statement on financial and administrative implications, considered by the Commission at its 20th and 21st meetings. After certain amendments had been made, the proposal was approved by the Commission for inclusion in its report as follows:

RECOMMENDATION APPROVED BY THE COMMISSION
AT ITS 21st MEETING, ON 23 FEBRUARY 1968, FOR
INCLUSION IN THE REPORT

I

1. The Commission requests the Secretary-General to set up a register of organizations, together with their work, and a register of certain international instruments, texts and related documentation. These registers would be maintained in accordance with paragraphs 2 to 5 below.

Register of organizations

2. The register of organizations would contain the names of:
- (a) Organs of the United Nations;
 - (b) Specialized agencies and inter-governmental organizations; and

(c) International non-governmental organizations in consultative status with the Economic and Social Council of the United Nations; which are actively engaged in work, in the fields mentioned in paragraph 5 below, towards the progressive harmonization and unification of the law of international trade by promoting the adoption of international conventions, uniform laws, standard contract provisions, general conditions of sale, standard trade terms and other measures of a legal nature.

3. This register would be compiled in consultation with the organizations concerned and would contain a summary of work relating to the fields referred to in paragraph 5 below, which has been accomplished or is being undertaken by the organizations referred to in the register.

Register of texts

4. The register of texts would contain material relating to the fields mentioned in paragraph 5 below as follows:

- (a) The text of existing international conventions, model and uniform laws, customs and usages of a multilateral nature which have been published in written form;
- (b) A brief summary of proposed international conventions, model and uniform laws, customs and usages of a multilateral nature which are in preparation and have been published in written form.

Fields to be covered

5. The registers envisaged above would, in the first instance, be concerned with the following fields:

- (a) The law of sale of goods (corporeal movables);
- (b) Standard trade terms;
- (c) Arbitration law;
- (d) Negotiable instruments;
- (e) Documentary credits and the collection of commercial paper.

Publication

6. The information contained in the registers would be published and disseminated in the English, French, Spanish and Russian languages.

Bibliography

7. The Secretary-General should inquire whether one or more universities, research or similar institutions in the States Members of the United Nations would be willing to compile and disseminate a list of published books, articles and commentaries on 4 (a) and (b) above, and should report on this matter to the Commission at its second session.

II

Continuity of registers

In order that the scope of the registers mentioned in section I may be reviewed and expanded, the Commission recommends that the agenda of the second session of the Commission should include the following item: "Register of organizations and register of texts".

61. As regards paragraph 7 of the proposal, certain representatives expressed the view that the Secretary-General's inquiry should be directed to all countries. They drew attention to the views recorded in paragraph 49 of the report. Certain other representatives referred to the political and practical difficulties which the question

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involved and drew attention to the views recorded in paragraph 50 of the report.

62. The Commission in approving the inclusion of the proposal in the report decided to draw the attention of the General Assembly to the financial implications of the proposal and requested the Secretary-General to make a detailed study of the financial implications of the proposal for submission to the General Assembly.

63. As regards paragraph 4 (a) of the proposal, the Commission decided that the register should indicate the status of signatures, ratifications, accessions, date of entry into force, reservations and depositaries of the conventions, as well as the existence of explanatory notes.

CHAPTER VI

TRAINING AND ASSISTANCE IN THE FIELD OF INTERNATIONAL TRADE LAW

64. A draft resolution sponsored by Argentina, Brazil, Chile, Colombia, Mexico and the United States (A/CN.9/L.4) on training and assistance in the field of international trade law, particularly in many of the developing countries, was submitted to the Commission at its 17th meeting. The draft resolution was the subject of discussion at the 18th and 19th meetings of the Commission.

65. At the 21st meeting of the Commission, the draft resolution was withdrawn by its sponsors and in its place a proposal was made for the inclusion of a paragraph on such training and assistance in the report of the Commission on the understanding that a consensus had been reached thereon. The United States in introducing the proposal stated that it had been prepared in light of the discussion of the subject in the Commission and of informal consultations between members of the Commission.

66. After certain amendments had been made, the Commission reached agreement, at its 22nd meeting, on the provisions of the paragraph to be included in the Commission's report. The text of the agreed provisions is contained in the following paragraph.

67. The Commission noted the special importance of increasing the opportunities for the training of experts in the field of international trade law, particularly in many of the developing countries. In this connexion, mindful of the activities being undertaken within the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, and of the work of the Advisory Committee on that Programme (General Assembly resolution 2204 (XXI)), the Commission considered that it should establish close and co-operative contact with the United Nations agencies, organizations and bodies, and with other inter-governmental and non-governmental organizations having responsibilities or concerns in the field of assistance related to international trade law, particularly training and research. It requested the Secretary-General to prepare a report with a view to establishing such co-operative relations, to be considered by the Commission at its second session.

68. The Secretary-General should, in the preparation of the report, pay due regard, in so far as appropriate, to the principal legal systems of the world.

CHAPTER VII

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

A. Legislation on shipping

69. Considering the proposal of the delegation of Chile and the discussion in the Commission on maritime shipping, the representative of the Secretary-General informed the Commission that the Legal Office would draw up a paper on this topic for subsequent consideration by the Commission.⁹ The Commission took note with satisfaction of this information.

B. Chairman's visit to the second session of the United Nations Conference on Trade and Development

70. The Commission at its 23rd meeting decided to invite its Chairman, or if he was unable to go, another member of the bureau, at the end of the first session, to journey to New Delhi to participate in the meetings of the second session of the United Nations Conference on Trade and Development (UNCTAD).

71. It also decided that the purpose of the Chairman's visit would be:

(a) To convey to the Chairman of the second session of UNCTAD the expression of the Commission's desire to establish and maintain close collaboration with UNCTAD and its organs, in accordance with General Assembly resolution 2205 (XXI);

(b) To inform the second session of UNCTAD of the contents of the report of the Commission on its first session, and to inform in particular the Fourth Committee of the second session of UNCTAD of the course of discussion on the subject of transportation;

(c) To convey to the appropriate organs of UNCTAD the desire of the Commission to avoid duplication of work between UNCTAD and the Commission and their respective secretariats in the field of international trade law.

C. Date of the second session

72. The Commission decided, at its 23rd meeting, that its next session, which would be held in Geneva, should be convened on 3 March 1969 for a period of four to five weeks.

D. Adoption of the report of the Commission

73. At its 25th meeting, on 26 February 1968, the Commission adopted the report on its first session, and the Chairman declared the first session of the Commission closed.

ANNEX I

List of participants

A. Members of the Commission

ARGENTINA

Representative

Mr. Gervasio Ramón Carlos COLOMBRES, Professor at the Catholic Argentinian University Santa María of Buenos Aires and at the University of Buenos Aires

⁹ For the statement of the representative of the Secretary-General, see A/CN.9/SR.25.

AUSTRALIA

Representative

Mr. Anthony MASON, Q.C., Solicitor-General for the Commonwealth of Australia

Alternate Representative

Mr. Michael MCKEOWN, First Secretary, Permanent Mission

BELGIUM

Representative

Mr. Albert LILAR, Professor at the Law Faculty and at the Faculty of Social, Political and Economic Sciences of the Free University of Brussels, former Minister, Senator

Alternate Representatives

Mr. Paul JENARD, Director, Ministry of Foreign Affairs and Foreign Trade

Mr. Erik BAL, First Secretary, Permanent Mission

BRAZIL

Representative

Mr. Nehemias DA SILVA GUEIROS, Professor of Civil Law, Recife Law School

CHILE

Representative

Mr. Eugenio CORNEJO FULLER, Professor at the Faculty of Juridical and Social Sciences, Catholic University of Valparaiso

Alternate Representative

Mr. Jose PIÑERA, Ambassador, Permanent Representative to the United Nations

COLOMBIA

Representative

Mr. Alvaro HERRAN MEDINA, Ambassador, Alternate Representative to the United Nations

CONGO (DEMOCRATIC REPUBLIC OF)

Representative

Mr. Vincent MUTUALE, First Secretary, Permanent Mission

Alternate Representative

Mr. Gérard BALANDA

CZECHOSLOVAKIA

Representative

Mr. Josef SMEJKAL, Ambassador, Head of Legal Department, Ministry of Foreign Affairs

Alternate Representative

Mr. Ludvík KOPAC, Legal Adviser, Ministry of Foreign Trade

Adviser

Mr. Jiří MLADEK, First Secretary, Permanent Mission

FRANCE

Representative

Mr. René DAVID, Professor at the Faculty of Law and Economic Sciences of Paris

Alternate Representative

Mr. Claude CHAYET, Deputy Permanent Representative to the United Nations

Advisers

Mr. Alain DEJAMMET, Secretary of Embassy, Permanent Mission

Miss Sylvie ALVAREZ, Secretary of Embassy, Permanent Mission

GHANA

Representative

Mr. Emmanuel Kodjoe DADZIE, Ambassador, Chief State Attorney, Office of the Attorney-General

Alternate Representative

Mr. Emmanuel SAM, First Secretary, Permanent Mission

Adviser

Mrs. Agnes Y. AGGREY-ORLEANS, Second Secretary, Permanent Mission

HUNGARY

Representative

Mr. László RÉCZEI, Ambassador, Professor of Law, Department of Economics, University of Budapest

Alternate Representatives

Mr. Iván SZÁSZ, Head of the Legal Department, Ministry of Foreign Trade

Mr. Ferenc Gyarmati, First Secretary, Permanent Mission

INDIA

Representative

Mr. K. Khrishna RAO, Ambassador, Joint Secretary and Legal Adviser, Ministry of External Affairs

Alternate Representative

Mr. B. C. MISHRA, Deputy Permanent Representative, Permanent Mission

Adviser

Mr. D. A. KAMAT, Legal Adviser, Permanent Mission

IRAN

Representative

Mr. Mansour SAGHRI, Professor of Commercial Law, Faculty of Law of Teheran

ITALY

Representative

Mr. Giorgio BERNINI, Professor of Private Comparative Law, University of Ferrara

Adviser

Mr. Joseph NITTI, First Secretary, Permanent Mission

JAPAN

Representative

Mr. Shinichiro MICHIDA, Professor of Law, University of Kyoto

KENYA

Representative

Mr. Maluki Kitili MWENDWA, Solicitor-General of Kenya

Alternate Representative

Mr. Raphael Joseph OMBERE, Assistant Secretary (Legal), Ministry of Foreign Affairs

MEXICO

Representative

Mr. Jorge BARRERA GRAF, Professor of Commercial Law, National University of Mexico

NIGERIA

Representative

Mr. Adeitan Ayinde ADEDIRAN, Acting Solicitor-General and Permanent Secretary

Alternate Representative

Mr. B. Akporode CLARK, Counsellor, Permanent Mission

Adviser

Mr. O. B. AWOSIKA, Second Secretary, Permanent Mission

NORWAY

Representative

Mr. Stein ROGNLIEN, Head of Department of Legislation, Ministry of Justice

Alternate Representative

Mr. Per TRESSELT, First Secretary of Embassy, Permanent Mission

ROMANIA

Representative

Mr. Ion NESTOR, Scientific Secretary, Council for Juridical Research, Academy of Science of Romania

Alternate Representative

Mr. Vasile TILINCA, Second Secretary, Press Officer, Permanent Mission

SPAIN

Representative

Mr. Joaquín GARRIGUES, Professor of Commercial Law, University of Madrid

Alternate Representative

Mr. Santiago MARTINEZ CARO, Deputy Legal Counsellor, Ministry of Foreign Affairs

SYRIA

Representative

Mr. Kamal YAEQOUB, Legal and Financial Adviser, Ministry of Finance

Alternate Representatives

Mr. Rafic JOUEJATI, Counsellor, Permanent Mission
Mr. Dia-Allah EL-FATTAL, First Secretary, Permanent Mission

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Alternate Representative

Mr. Wichian WATANAKUN, Royal Thai Embassy, Washington, D.C.

Adviser

Mr. Tongnoi TONGYAI, Permanent Mission

TUNISIA

Representative

Mr. Hichem AYOUB, Third Secretary of Embassy, Permanent Mission

UNION OF SOVIET SOCIALIST REPUBLICS

Representative

Mr. G. S. BURGUCHEV, Chief of the Treaty and Law Administration of the Ministry of Foreign Trade

Alternate Representative

Mr. E. T. USENKO, Doctor of Juridical Sciences, Professor at the All-Union Academy of Foreign Trade

Adviser

Mr. N. A. SHPINDLER, Expert of the Treaty and Law Administration of the Ministry of Foreign Trade

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Representative

Mr. Mohsen SHAFIK, Professor of Trade Law, Faculty of Law, Cairo University

Alternate Representative

Mr. Nabil EL ARABY, First Secretary, Permanent Mission

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Representative

Mr. Anthony Gordon GUEST, Professor of English Law, University of London

Alternate Representatives

Mr. Henry Galton DARWIN, Legal Counsellor, Permanent Mission

Mr. Michael John WARE, Senior Legal Assistant, Board of Trade

Adviser

Mr. John Hedley CLEMENT, Board of Trade

UNITED REPUBLIC OF TANZANIA

Representative

Mr. M. N. RATTANSEY, Barrister-at-Law, Member of Parliament

UNITED STATES OF AMERICA

Representative

Mr. Seymour J. RUBIN, Attorney-at-Law, Adjunct Professor of Law, Georgetown University Law Center, Washington, D.C.

Alternate Representative

Mr. John L. HARGROVE, Senior Adviser, International Law, Permanent Mission

Adviser

Mr. Robert B. ROSENSTOCK, Adviser, Legal Affairs, Permanent Mission

B. Observers

1. UNITED NATIONS ORGANS

United Nations Conference on Trade and Development

Mr. Diego CORDOVEZ, Special Assistant to the Secretary-General of UNCTAD

Mr. Salvatore SCHIAVO-CAMPO, Economic Affairs Officer

2. SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

Mr. D. WOODWARD, Director, FAO Liaison Office with the United Nations

Mr. M. GREENE, Assistant Director

International Bank for Reconstruction and Development

Mr. A. BROCHES, General Counsel

Mr. D. SURATGAR, Member of the Legal Department

International Labour Organisation

Mr. F. F. JONKER, Deputy Director, Liaison Office with the United Nations

International Monetary Fund

Mr. Robert C. EFFROS, Member of the Legal Department

Mr. Gordon WILLIAMS, Special Representative to the United Nations

3. INTER-GOVERNMENTAL ORGANIZATIONS

Commission of European Communities

Mr. Friedrich ALBRECHT, Legal Counsellor

Council of Europe

Mr. Polys MODINOS, Deputy Secretary-General

Hague Conference on Private International Law

Mr. H. VAN HOOGBRATEN, Secretary-General

International Institute for the Unification of Private Law

Mr. Mario MATTEUCCI, Secretary-General

Organization of American States

Mr. Georges D. LANDAU, Member of the General Secretariat

United International Bureaux for the Protection of Intellectual Property

Mr. G. H. C. BODENHAUSEN, Director

Mr. Ross WOODLEY, Senior Counsellor for Relations with International Organizations

4. INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

International Chamber of Commerce

Mr. G. W. HAIGHT, Vice President, International Arbitration Commission of the ICC

Mr. Stephen P. LADAS, Honorary President, Commission for the International Protection of Industrial Property

Mr. Carl McDOWEL, Executive Vice President, Association of Marine Underwriters of the United States

B. Comments and action with respect to the report of the Commission

1. *Extract from the report of the Trade and Development Board, United Nations Conference on Trade and Development, 10 September 1967-23 September 1968**

CHAPTER VII

PROGRESSIVE DEVELOPMENT OF THE LAW OF INTERNATIONAL TRADE: FIRST ANNUAL REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW¹

(Agenda item 9)

155. In connexion with this item, the representative of the Legal Counsel of the United Nations introduced the first annual report of the United Nations Commission on International Trade Law (UNCITRAL) (A/7216)² established by General Assembly resolution 2205 (XXI) of 17 December 1966. Under section II, paragraph 10, of that resolution, UNCITRAL is to "submit an annual report, including its recommendations, to the General Assembly, and the report shall be submitted simultaneously to the United Nations Conference on Trade and Development for comments". In introducing UNCITRAL's first report, the representative of the Legal

¹ This item was referred to the Sessional Committee for consideration and report.

² *Official Records of the General Assembly, Twenty-third session, Supplement No. 16*. See also the relevant note by the UNCTAD secretariat (TB/B/179).

* *Official Records of the General Assembly, Twenty-third Session, Supplement No. 14 (A/7214)*.

International Juridical Organization for Developing Countries

Mr. Mario GUTTIERES, Chairman of the Executive Committee

Mr. George A. TESORO, United States representative of IJO

C. Secretariat

Mr. Constantin A. STAVROPOULOS, Representative of the Secretary-General, The Legal Counsel

Mr. F. Blaine SLOAN, Director of the General Legal Division, Office of Legal Affairs

Mr. Paolo CONTINI, Secretary of the Commission, Chief of the International Trade Law Branch, General Legal Division

Mr. Peter KATONA, Assistant Secretary of the Commission, Senior Legal Officer

Mr. John H. DE SARAM, Assistant Secretary of the Commission, Legal Officer

Mrs. Jelena VILUS, Assistant Secretary of the Commission, Legal Officer

ANNEX II

Resolution 2205 (XXI), adopted by the General Assembly at its 1497th plenary meeting on 17 December 1966

[Annex not reproduced; see part one, section II, E]

ANNEX III

List of documents of the first session of the Commission

[Annex not reproduced; see check list of UNCITRAL documents at the end of the volume]

Counsel described the origins, composition and terms of reference of UNCITRAL, gave particulars of the topics selected for treatment by UNCITRAL, of the order of priorities accorded to certain topics, and of the methods which UNCITRAL proposed to follow in its work. He stressed that the harmonization and unification of the law of international trade were conceived by UNCITRAL not as an academic exercise but as a contribution to facilitating the flow of international trade, a conception which explained the existence of a special relationship between UNCITRAL and UNCTAD. He explained that the first session of UNCITRAL had been devoted mainly to organizational matters and to the establishment of its programme of work. At its second session (scheduled to be held at Geneva in March 1969) UNCITRAL would begin consideration of the substance of the topics to which it had decided to give priority, and at that session, too, it would consider the advisability of appointing sub-committees or working groups to deal with specific matters in the interval between its own sessions.

156. In general, and subject to their comments on specific points, many representatives welcomed UNCITRAL's decisions concerning its programme of work (A/7216, chapter IV, para. 40), methods of work

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(para. 45), the establishment of a register of organizations and texts (chapter V) and the proposals concerning training and assistance in the field of international trade law (chapter VI).

157. A number of representatives stressed the value of close co-operation between UNCITRAL and UNCTAD. Representatives of some developing countries stated that the purpose of UNCITRAL should be not merely to recommend the removal of legal obstacles to the flow of international trade but to place at the disposal of the international community the juridical means of stimulating trade, particularly that of the developing countries. They considered that UNCITRAL should engage in the dynamic task of elaborating a new *lex mercatoria* in the formulation of which the developing countries should have a full say, as these countries had played little part in the past in the formulation of trade law. UNCITRAL should examine to what extent the existing rules applied in international trade were consistent with the principles already recommended in UNCTAD. In the consideration of the topics selected for study UNCITRAL should be guided by the criterion: In what way could its work contribute to the expansion of international trade and to the bridging of the gap between developing and developed countries? They stressed that UNCITRAL should take account of the realities of international trade and of its long-term prospects.

158. One of these representatives suggested that, in addition to co-operation at the secretariat level, co-operation between UNCITRAL and UNCTAD might take several forms. For example, he said, joint meetings of UNCTAD bodies with UNCITRAL might be organized to consider matters within the competence of the Committee on Invisibles and Financing related to Trade; and UNCTAD might perhaps suggest that some particular topic be placed on the agenda of UNCITRAL.

159. Another of these representatives welcomed the decision taken by UNCITRAL to proceed by consensus, for, he said, it would not be conducive to the formulation of a unified law if some provision or instrument were approved by a small majority.

160. The representative of one developing country stated that at the first session of UNCITRAL his country had proposed the inclusion, in UNCITRAL's programme of work, of the study of international legislation on shipping. In his opinion, the Board should instruct the Committee on Shipping to establish a working group on international legislation on shipping and thereafter the Committee might ask UNCITRAL to take up the drafting of new conventions on the subjects identified by the Working Group.

161. The representative of a developed market economy country stressed that any reference to the role of UNCITRAL in the field of shipping should not be discussed in connexion with agenda item 9, since there was

a separate item on the agenda dealing with international legislation on shipping.³

162. The representative of a socialist country of Eastern Europe stressed that the objective of co-operation between UNCTAD and UNCITRAL should be to eliminate discrimination in international trade and to give greater effect to the principles contained in the Final Act of the 1964 Conference, in particular General Principle Six.⁴ He pointed out that this subject should be given priority in the deliberations of UNCITRAL. He suggested that UNCITRAL might elaborate a draft convention for the elimination of discrimination and concerning the most-favoured-nation clause. He considered that the terms of reference of UNCITRAL should not be restrictive in the sense that UNCITRAL would be concerned only with the body of rules governing commercial relationships of a private law nature (A/7216, para. 23); in his opinion, matters within the domain of public law should be taken into consideration by UNCITRAL.

163. The representative of a developed market economy country, on the other hand, expressed the view that UNCITRAL should confine its attention to specific areas of international private law affecting trade, and not extend its activities into the sphere of public trade law or trade policy. In his opinion, UNCITRAL was primarily a technical body of legal experts whose task it was, where possible, to codify or consolidate in quasi-legislative form existing trade practices in appropriate fields of private international trade law and not to engage in substantive issues of policy. The representative of another developed market economy country suggested that reports of UNCITRAL might be distributed to interested UNCTAD bodies for comment. In particular, he considered that these reports should be transmitted to the Committee on Shipping as an annex to the secretariat's report on recent developments and long-term trends in the field of shipping.

164. The representative of one developing country suggested that UNCITRAL should put "transportation" on its priority list and to this end establish a working party to deal with the subject.

Action by the Board

165. At its 172nd meeting on 20 September 1968, the Board took note with appreciation of the first annual report of UNCITRAL (A/7216). It commended UNCITRAL on its programme of work and stressed that the needs of developing countries should receive adequate attention. It stressed the importance of co-operation between UNCTAD and UNCITRAL at the intergovernmental and secretariat levels.

³ See chapter II, paras. 62-75, of the Board's report.

⁴ See *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No.: 64.II.B.11), p. 10.

2. Report of the Sixth Committee*

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I. INTRODUCTION

1. At its 1676th plenary meeting, on 27 September 1968, the General Assembly included as item 88 in the agenda of its twenty-third session, and allocated to the Sixth Committee for consideration and report, the item entitled "Report of the United Nations Commission on International Trade Law on the work of its first session".

2. The Sixth Committee considered this item at its 1082nd to 1085th meetings, held from 27 November to 3 December 1968 and at its 1096th and 1097th meetings, held on 13 and 14 December 1968.

3. At the 1082nd meeting, on 27 November 1968, Mr. Dadzie (Ghana), Chairman of the United Nations Commission on International Trade Law at its first session, at the invitation of the Chairman, introduced the Commission's report on the work of that session (A/7216). At the 1096th meeting, on 13 December 1968, after hearing a statement by the representative of the Secretary-General on financial implications, the Committee decided that in the future the Commission's annual report should be introduced to the General Assembly by the Chairman of the Commission, or by another officer to be designated by him.

4. At the 1097th meeting, on 14 December 1968, the Rapporteur of the Sixth Committee raised the question whether the Committee wished to include in its report to the General Assembly a summary of the views expressed during the debate on agenda item 88. After referring to paragraph (f) of the annex to General Assembly resolution 2292 (XXII), the Rapporteur informed the Committee of the financial implications of the question. At the same meeting, the Committee decided that, in view of the nature of the subject-matter, the report on agenda item 88 should include a summary of the representative

trends of opinion and not of the individual views of all delegations.

5. The report of the United Nations Commission on International Trade Law on the work of its first session, which was before the Sixth Committee, is divided into seven chapters as follows:

- I. Establishment and terms of reference of the Commission;
- II. Organization of the first session;
- III. General debate;
- IV. Programme of work of the Commission;
- V. Establishment within the Secretariat of a register of organizations and a register of texts;
- VI. Training and assistance in the field of international trade law;
- VII. Other decisions and conclusions of the Commission.

II. PROPOSALS

6. At the 1096th meeting, on 13 December 1968, the representative of Ghana introduced a draft resolution sponsored by Argentina, Cameroon, Chile, Congo (Democratic Republic of), El Salvador, Ghana, Hungary, India, Japan, Netherlands, Nigeria, Pakistan, Romania, Spain, Syria, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and Zambia (A/C.6/L.738/Rev.1 and Add.1-3), which read as follows:

"The General Assembly,

"Having considered the report of the United Nations Commission on International Trade Law on the work of its first session (A/7216),

* Official Records of the General Assembly, Twenty-third Session, Annexes, agenda item 88, document A/7408.

"Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law and defined its object and terms of reference,

"Noting the chapter of the report of the Trade and Development Board on its seventh session (A/7214, part two, chapter VII)¹ concerning the report of the United Nations Commission on International Trade Law on the work of its first session, and nothing further that the Board expressed its appreciation of the Commission's report and commended the Commission for its programme of work,

"Endorsing the statement of the Trade and Development Board (*ibid.*, para. 165) emphasizing that the needs of developing countries should receive adequate attention in the programme of work of the United Nations Commission on International Trade Law and stressing the importance of co-operation between the United Nations Conference on Trade and Development and the Commission at the intergovernmental and secretariat levels,

"Bearing in mind the wish expressed by many members of the Trade and Development Board at its seventh session that the United Nations Commission on International Trade Law should add international shipping legislation to its list of priority topics (A/7214, para. 74), and bearing also in mind the activities of other agencies active in this field,

"Noting with satisfaction that the United Nations Commission on International Trade Law intends to carry out its work in co-operation with organs and organizations concerned with the progressive harmonization and unification of international trade law, and that such co-operation has already been initiated,

"Convinced that the harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, would significantly contribute to economic co-operation between countries and, thereby, to their well-being,

"Having considered the report of the Secretary-General concerning the financial and administrative implications of the establishment of a register of organizations and a register of texts in the field of international trade law (A/C.6/L.648 and Add.1),

"1. Takes note with appreciation of the report of the United Nations Commission on International Trade Law on the work of its first session;

"2. Notes with approval the programme of work established by the United Nations Commission on International Trade Law;

"3. Authorizes the Secretary-General to establish a register of organizations in accordance with directives laid down by the United Nations Commission on International Trade Law;

"4. Approves in principle the proposal to establish a register of the international instruments and other documents referred to in chapter V of the report of

the United Nations Commission on International Trade Law, and requests that the Commission should consider further at its second session the precise nature and scope of such a register in the light of the report of the Secretary-General (*ibid.*) and the discussions at the twenty-third session of the General Assembly;

"5. Authorizes the Secretary-General to establish the register referred to in paragraph 4 above in accordance with the further directives to be given by the United Nations Commission on International Trade Law at its second session;

"6. Recommends that the United Nations Commission on International Trade Law should:

"(a) Continue its work on the topics to which it decided to give priority, that is, the international sale of goods, international payments and international commercial arbitration;

"(b) Consider the inclusion of international shipping legislation among the priority topics in its work programme;

"(c) Consider opportunities for training and assistance in the field of international trade law in the light of relevant reports of the Secretary-General;

"(d) Keep its programme of work under constant review, bearing in mind the interests of all peoples, and particularly those of the developing countries, in the extensive development of international trade;

"(e) Consider at its second session ways and means of promoting co-ordination of the work of organizations active in the progressive harmonization and unification of international trade law and of encouraging co-operation among them;

"(f) Consider, when appropriate, the possibility of issuing a yearbook which would make its work more widely known and more readily available;

"7. Requests the Secretary-General to forward to the United Nations Commission on International Trade Law the records of the discussions on the Commission's report at the twenty-third session of the General Assembly."

III. DEBATE

7. The main trends of the Sixth Committee's debate on agenda item 88 are summarized in the following seven sections. The first section concerns the observations which were made on the role and the work of the Commission in general. The other six sections contain a summary of the observations relating more particularly to the report of the Commission on the work of its first session and are set out under the following headings: programme of work of the Commission, international shipping legislation, establishment within the Secretariat of a register of organizations and a register of texts, training and assistance in the field of international trade law, collaboration with other organizations, and publication of a yearbook.

A. *The role and the work of the Commission in general*

8. Several representatives characterized the Commission as the principal organ responsible for the pro-

¹ See section B,1, above.

gressive development of international trade law and for the co-ordination of the unification activities of other governmental and non-governmental organizations. Some of those representatives expressed the opinion that the task of the Commission should not be merely to encourage and co-ordinate work carried out elsewhere, but also to undertake work of its own in order to reduce and remove legal obstacles to the flow of international trade. In doing so, the Commission should ensure the full participation of developing countries which, until now, had not taken an active part in the development and formulation of international trade law.

9. Many representatives commended the Commission for having obtained tangible results during its first session. It was noted with approval that it had decided to take its decisions as far as possible by consensus. This would permit the Commission, whose members were States with different social-economic systems, different levels of development, and different legal systems and historical traditions, to base its work on careful regard for proposals submitted and respect for mutual interests. Some representatives, while agreeing with the principle of consensus, nevertheless observed that consensus should not be ensured at all costs as if this were the essential objective of the Commission's discussions, nor should its purpose be merely to satisfy a disident minority. In appropriate circumstances, decisions should be made by vote.

10. A number of representatives stressed the importance of Governments during their utmost to support the Commission in its work, *inter alia*, by responding promptly to requests for information and comments on topics on its agenda and by seeing to it that it remained foremost a body of experts. The view was expressed that the Commission should also have invited States other than its own members to submit studies on certain subjects, so as to enable it to work on a sufficiently broad basis. According to another view, owing to the universal character of the Commission's work, documents and inquiries emanating from the Commission should be transmitted to all States, whether or not they were Members of the United Nations or members of its specialized agencies.

11. One representative observed that, in electing the members of the Commission, the General Assembly had regrettably neglected to ensure representation of the Chinese legal system.

12. A number of representatives expressed approval that the Commission had not felt it necessary, at this stage of its work, to formulate a definition of international trade law and were of the opinion that it had acted wisely in taking practical considerations into account when drawing up its programme. It was observed by others, however, that it was unfortunate that the Commission had been unable to agree on a definition of international trade law; the Commission should not limit its work to the consideration only of questions of private law, since a significant number of the questions of international trade law which were of cardinal importance to all countries would then lie outside its field of activity.

13. Some representatives stressed the particular importance of the Commission's work for the developing

countries. That work should fully reflect the principles governing international trade relations and trade policies conducive to development, adopted at the first session of the United Nations Conference on Trade and Development.² Other representatives, however, emphasized the community of interest which both developed and developing countries had in the work of the Commission and cautioned against introducing into that work notions of a dichotomy of interest drawn from related but different contexts.

B. Programme of work of the Commission

14. Most representatives commended the Commission for its selection of priority topics, which covered three important fields of international trade law, i.e., the international sale of goods, international payments and international commercial arbitration. Some representatives expressed the wish that the Commission maintain a certain degree of flexibility in its programme of work, which should be revised from time to time to meet the requirements of the international community.

15. One representative questioned the choice of international commercial arbitration as a priority topic and deemed it preferable first to make a census of existing international instruments on the subject. It was also observed that the Commission could derive great advantage from the establishment of a collection of important arbitral awards handed down in the field of international trade.

16. The suggestion was made that other items, such as the question of the most-favoured-nation clause, the promotion of participation in the Convention on Transit Trade of Land-locked States and, as a matter of priority, the elimination of discrimination in laws affecting international trade, should also be considered by the Commission. However, some representatives, referring to the political implications which the consideration of the question of discrimination in laws affecting international trade might possibly involve, questioned the expediency of suggesting to the Commission that it should take up that item.

C. International shipping legislation

17. With regard to international shipping legislation, reference was made to the recommendation made by many members of the Trade and Development Board at its seventh session to the effect that the United Nations Commission on International Trade Law should take the necessary measures to deal, as a matter of priority, with international shipping legislation (see A/7214, part two, para. 74). Most of the representatives who spoke on this subject favoured an active involvement on the part of the Commission and said that they would welcome the inclusion of shipping legislation among the priority items. Some representatives, while agreeing that the Commission should consider the law of shipping, deemed it nevertheless advisable for it to defer its work on that subject until the Committee on Shipping of the Trade and Development Board had considered the scope of

² See *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No.: 64.II.B.11), annex A.I.1, p. 18.

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international shipping legislation and made its recommendations to the Commission. Other representatives drew attention to the activities of the United Nations Conference on Trade and Development and the Intergovernmental Maritime Consultative Organization in the matter of international shipping legislation and emphasized, in this connexion, that it was of increasing importance that the Commission should co-ordinate the various efforts made in this field so as to avoid, as far as possible, duplication of work.

D. *Establishment within the Secretariat of a register of organizations and a register of texts*

18. There was general recognition of the importance of a register of organizations, containing a survey of their activities, and a register of international instruments in certain fields of international trade law. The view was expressed that this would permit the Commission to keep abreast of the latest developments and collect the information necessary for its work. It was also stated that such registers would no doubt be useful to Governments and other organizations. Several representatives, however, expressed their hesitation in view of the financial implications and were of the opinion that the Commission should consider further the scope of the register of texts at its second session, taking into account the report of the Secretary-General on the administrative and financial implications of the registers (A/C.6/L.648 and Add.1) and the observations made thereon during the debates in the Sixth Committee. Some representatives were of the opinion that the aim pursued by the Commission could perhaps also be achieved by other means, such as by publishing a list of the titles and sources of the various instruments and documents, without reproducing the texts thereof. One representative entered a strong protest at the omission of Chinese from the list of official languages in which the registers were to be published.

E. *Training and assistance in the field of international trade law*

19. Many representatives supported the Commission's proposals concerning training and assistance in the field of international trade law (see A/7216, chapter VI). It was noted with approval that the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law had recommended that an appropriate place should be given to the activities concerning international trade law within the framework of the activities conducted under the Programme. It was suggested that the Commission, at its second session, should give careful consideration to training and assistance in international trade law on the basis of the report to be submitted by the Secretary-General. Some representatives urged that the Commission should take suitable steps to increase the opportunities for training experts, particular-

ly in the developing countries, and to place at the disposal of the international community the juridical means of stimulating trade.

F. *Collaboration with other organizations*

20. A number of representatives referred to the problem of the waste of effort and the confusion caused by the existence of competing agencies in the work of unification. It was stressed, in this connexion, that the remedy would seem to lie in the Commission's functioning as a rallying-ground for unificatory activities and in its co-ordination and supervision of such activities. Some representatives stressed that the Commission should be the main co-ordinating and law-making international organ in the field of international trade law and that it should maintain close co-operation with the specialized agencies and the intergovernmental and non-governmental organizations concerned. Other representatives emphasized that the work of the Commission should be complementary to the efforts that had been made and were being made by such organizations and that stimulating wider interest in, and particular work by, existing institutions was among the significant contributions that the Commission could make.

G. *Yearbook*

21. Several representatives deemed it desirable that the Commission should issue a yearbook similar to that of the International Law Commission. Most representatives, however, agreed that there was no need for the Sixth Committee to take a decision on the matter at this time and that it was for the United Nations Commission on International Trade Law to determine the desirability of such a step.

IV. VOTING

22. At the 1097th meeting of the Sixth Committee, held on 14 December 1968, it was decided, at the request of some representatives, to vote separately on paragraphs 4 and 5 of the draft resolution (A/C.6/L.738/Rev.1 and Add.1-3). Paragraph 4 was adopted by 70 votes to 1, with 8 abstentions. Paragraph 5 was adopted by 60 votes to 4, with 16 abstentions. The draft resolution as a whole was adopted by 77 votes to none, with 2 abstentions. Explanations of vote were given by the representatives of Australia, Bulgaria, Canada, China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

V. RECOMMENDATION OF THE SIXTH COMMITTEE

[The text of the recommendation, not included here, contained a draft resolution which was adopted by the General Assembly and appears in section 3 below.]

3. General Assembly resolution 2421 (XXIII) of 18 December 1968

2421 (XXIII). REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

The General Assembly,

Having considered the report of the United Nations Commission on International Trade Law on the work of its first session,¹

Recalling its resolution 2205 (XXI) of 17 December 1966 by which it established the United Nations Commission on International Trade Law and defined its object and terms of reference,

Noting the chapter of the report of the Trade and Development Board on its seventh session² concerning the report of the United Nations Commission on International Trade Law on the work of its first session, and noting further that the Board expressed its appreciation of the Commission's report and commended the Commission for its programme of work,

Endorsing the statement in which the Trade and Development Board³ emphasized that the needs of developing countries should receive adequate attention in the programme of work of the United Nations Commission on International Trade Law and stressed the importance of co-operation between the United Nations Conference on Trade and Development and the Commission at the intergovernmental and secretariat levels,

Bearing in mind the wish expressed by many members of the Trade and Development Board at its seventh session that the United Nations Commission on International Trade Law should add international shipping legislation to its list of priority topics⁴ and also bearing in mind the activities of other agencies active in this field,

Noting with satisfaction that the United Nations Commission on International Trade Law intends to carry out its work in co-operation with organs and organizations concerned with the progressive harmonization and unification of international trade law and that such co-operation has already been initiated,

Convinced that the harmonization and unification of international trade law, in reducing or removing legal obstacles to the flow of international trade, would significantly contribute to economic co-operation between countries and, thereby, to their well-being.

Having considered the report of the Secretary-General concerning the financial and administrative implications of the establishment of a register of organizations and a register of texts in the field of international trade law,⁵

¹ *Official Records of the General Assembly, Twenty-third Session, Supplement No. 16 (A/7216).*

² *Ibid.*, Supplement No. 14 (A/7214), part two, chapter VII.

³ *Ibid.*, para. 165.

⁴ *Ibid.*, para. 74.

⁵ *Ibid.*, *Twenty-third Session, Annexes*, agenda item 88, document A/C.6/L.648; A/C.648/Add.1.

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law on the work of its first session;

2. *Notes with approval* the programme of work established by the United Nations Commission on International Trade Law;

3. *Authorizes* the Secretary-General to establish a register of organizations in accordance with directives laid down by the United Nations Commission on International Trade Law;

4. *Approves* in principle the proposal to establish a register of the international instruments and other documents referred to in chapter V of the report of the United Nations Commission on International Trade Law and requests that the Commission should consider further at its second session the precise nature and scope of such a register in the light of the report of the Secretary-General and the discussions on the registers at the twenty-third session of the General Assembly;

5. *Authorizes* the Secretary-General to establish the register referred to in paragraph 4 above in accordance with the further directives to be given by the United Nations Commission on International Trade Law at its second session;

6. *Recommends* that the United Nations Commission on International Trade Law should:

(a) Continue its work on the topics to which it decided to give priority, that is, the international sale of goods, international payments and international commercial arbitration;

(b) Consider the inclusion of international shipping legislation among the priority topics in its work programme;

(c) Consider opportunities for training and assistance in the field of international trade law, in the light of relevant reports of the Secretary-General;

(d) Keep its programme of work under constant review, bearing in mind the interests of all peoples, and particularly those of the developing countries, in the extensive development of international trade;

(e) Consider at its second session ways and means of promoting co-ordination of the work of organizations active in the progressive harmonization and unification of international trade law and of encouraging co-operation among them;

(f) Consider, when appropriate, the possibility of issuing a yearbook which would make its work more readily available;

7. *Requests* the Secretary-General to forward to the United Nations Commission on International Trade Law the records of the discussions on the Commission's report at the twenty-third session of the General Assembly.

*1746th plenary meeting,
18 December 1968.*

C. List of relevant documents not reproduced in the present volume

<i>Titile or description</i>	<i>Document reference</i>
First session of the United Nations Commission on International Trade Law: note by the Secretariat	A/CN.9/1
Adoption of rules of procedure: note by the Secretary-General	A/CN.9/3
Comments by Member States, organs and organizations on the work programme of the Commission: note by the Secretary-General	A/CN.9/4 and Corr.1
Analysis of the comments submitted by Member States, organs and organizations on the work programme of the Commission: note by the Secretary-General	A/CN.9/4 and Add.1 and 2
Survey of activities of organizations concerned with the harmonization and unification of the law of international trade: note by the Secretary-General	A/CN.9/5
Organization and methods of work: note by the Secretary-General	A/CN.9/6 and Corr.1
Collaboration and working relationships with organs and organizations concerned with international trade law: note by the Secretary-General	A/CN.9/7
Methods of work for priority topics (Working paper submitted by the Working Group on agenda item 5 (a) and (b) as adopted, with amendments, by the Commission at its 19th meeting on 22 February 1968)	A/CN.9/9
Recommendation approved by the Commission at its 21st meeting, on 23 February 1968, for inclusion in the report.	A/CN.9/10
Working paper (accepted by the Commission as a working paper at its 13th meeting, on 14 February 1968)	A/CN.9/L.1/ Rev.1
Methods of work for priority topics: working paper submitted by the Working Group	A/CN.9/L.3 and Corr.1
Summary records of the first session of the Commission (1968)	A/CN.9/SR1-25